

THE SCOTT LAW GROUP, P.S.
 Darrell W. Scott darrellscott@mac.com
 Matthew J. Zuchetto matthewzuchetto@mac.com
 926 West Sprague Avenue, Suite 680
 Spokane, WA 99201
 Ph: (509) 455-3966

DURKOP LAW OFFICE
 Timothy W. Durkop tim@durkoplaw.com
 2312 N. Cherry Street, Suite 100
 Spokane Valley, WA 99216
 Ph: (509) 928-3848

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

CHAD M. CARLSEN and SHASTA L.
 CARLSEN, husband and wife, individually
 and on behalf of a Class of similarly situated
 Washington families; and CARL POPHAM
 and MARY POPHAM, husband and wife,
 individually and on behalf of a Class of
 similarly situated Washington families;

Plaintiffs,

v.

GLOBAL CLIENT SOLUTIONS, LLC, an
 Oklahoma limited liability company;
 GLOBAL HOLDINGS LLC, an Oklahoma
 limited liability company; ROCKY
 MOUNTAIN BANK & TRUST, a Colorado
 financial institution; ROBERT MERRICK, a
 resident of Oklahoma; MICHAEL HENDRIX,
 a resident of Oklahoma; and JOHN AND
 JANE DOES A-F,

Defendants.

NO. CV-09-246-LRS

CLASS ACTION

AMENDED CLASS ACTION
 COMPLAINT AND JURY
 DEMAND

AMENDED CLASS ACTION COMPLAINT
 AND JURY DEMAND: 1

LAW OFFICES
THE SCOTT LAW GROUP
 A PROFESSIONAL SERVICE CORPORATION
 926 W. SPRAGUE AVENUE
 SUITE 680
 SPOKANE, WA 99201
 (509) 455-3966

I. INTRODUCTION

1. Defendants are engaged in an ongoing class-wide predatory business scheme to financially enrich themselves and defraud already indebted Washington Class members by violating Washington's Debt Adjusting statute, chapter 18.28 RCW; by aiding and abetting the violation of chapter 18.28 RCW; by committing unfair and deceptive business practices in violation of Washington's Consumer Protection Act, chapter 19.86 RCW, by aiding and abetting such commission; and by engaging in other tortious conduct toward Washington Class members.

2. This action is brought on behalf of a Class of Washington families who have fallen victim to Defendants' business wrongdoing, to enjoin Defendants from such wrongful business conduct and to secure recovery for damages and other losses suffered by Class members.

II. PARTIES

3. **Plaintiffs Chad M. Carlsen and Shasta L. Carlsen:** Plaintiffs Chad M. Carlsen and Shasta L. Carlsen ("Carlsens") are husband and wife, domiciled in the state of Washington and residents of Spokane County. The Carlsens are members of the proposed Class and victims of wrongdoing alleged in this Complaint.

1 **4. Plaintiffs Carl Popham and Mary Popham:** Plaintiffs Carl Popham
2 and Mary Popham (“Pophams”) are husband and wife, domiciled in the state of
3 Washington and residents of Spokane County. The Pophams are victims of
4 wrongdoing alleged in this Complaint.
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6 **5. Defendant Global Client Solutions, LLC:** Defendant Global Client
7 Solutions, LLC (“GCS”) is a closely-held domestic limited liability company
8 formed in 2003, organized under the laws of Oklahoma. GCS has its principal
9 offices in Tulsa, Oklahoma. GCS does business throughout the United States,
10 including the state of Washington.
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12 **6. Defendant Global Holdings LLC:** Defendant Global Holdings LLC
13 (“Global”) is a closely-held domestic limited liability company formed in June
14 2007 and organized under the laws of Oklahoma. Global is the parent company of
15 GCS. Global’s offices are identical to those of GCS, located in Tulsa, Oklahoma.
16 Global, through its subsidiary and agent GCS, does business throughout the United
17 States, including the state of Washington.
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19 **7. Defendant Rocky Mountain Bank & Trust:** Defendant Rocky
20 Mountain Bank & Trust (“RMBT”) is a financial institution organized under the
21 laws of Colorado. RMBT has its principal place of business in Florence, Colorado.
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1 RMBT, in partnership with GCS, is engaged in business activities directed at
2 residents of Washington, including those alleged in this Complaint.
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4 8. **Defendant Robert Merrick:** Defendant Robert Merrick is a resident
5 of Broken Arrow, Oklahoma. Robert Merrick is the founder and Chairman of
6 Global, co-founder and Chairman of GCS, and founder and Manager of GCS's
7 predecessor-in-interest, CFG Acceptance LLC ("CFG"). Robert Merrick is a
8 principal owner, legally or beneficially, of Global, GCS, and CFG.
9

10 9. **Defendant Michael Hendrix:** Defendant Michael Hendrix is a
11 resident of Tulsa, Oklahoma. Michael Hendrix is the CEO of Global and CEO of
12 GCS. Michael Hendrix is a principal owner, legally or beneficially, of Global and
13 GCS.
14

15 10. **Defendants John and Jane Does A-F:** John and Jane Does A-F are
16 managing agents of Global, GCS, and/or RMBT who exercised close control,
17 direction, and management of Global, GCS, or RMBT in respect of misconduct
18 alleged in this Complaint; who participated in, or with knowledge, approved of
19 conduct alleged in this Complaint; or who otherwise engaged in conduct in
20 violation of chapters 19.86 and 18.28 RCW.
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1 **III. JURISDICTION AND VENUE**

2 11. This Court has original jurisdiction over this matter pursuant to 28
3 U.S.C. § 1332(d)(2). Based on information and belief, the matter in controversy
4 exceeds the sum or value of \$5,000,000 exclusive of interest and is a class action
5 composed of more than 100 members and in which at least one member of the
6 Class is a citizen of a state different from that of a Defendant.
7

8 12. This Court has personal jurisdiction over each of the Defendants.
9

10 13. Venue is proper pursuant to 28 USC § 1391(b)(2) in that the events
11 that gave rise to claims occurred in substantial part in this federal district.
12

13 **IV. FACTS**

14 14. GCS is a for-profit company whose principal business is receiving and
15 holding funds of consumer debtors for the purpose of distributing said funds
16 among consumer debtors' creditors in partial payment of obligations of those
17 consumer debtors.
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19 15. GCS acts in concert with for-profit debt settlement companies by
20 carrying out activities integral to debt settlement programs marketed to indebted
21 consumers.
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1 16. Since 2007, Global has been the parent company of and principal
2 owner of GCS. Since 2007, Global, through Robert Merrick, Michael Hendrix,
3 and potentially others, has exercised actual ultimate management responsibilities
4 over GCS's business activities.
5

6 17. Global and GCS share a common board of directors, common
7 officers, common offices, and common ownership, such that they constitute the
8 same single business enterprise.
9

10 18. Defendant Robert Merrick is the co-founder of GCS; the co-founder
11 of Global; the Chairman of the Board of Directors of GCS; and Chairman of the
12 Board of Directors of Global. In these capacities Robert Merrick instigated,
13 participated in, and with knowledge, approved of the wrongful conduct alleged in
14 this Complaint and otherwise directly or indirectly engaged in conduct violating
15 chapters 19.86 and 18.28 RCW.
16

17 19. Michael Hendrix, as CEO of GCS and CEO of Global, is responsible
18 for the strategic leadership of GCS's U.S. sales, marketing, and operations.
19 Michael Hendrix directs GCS's account management activities as they relate to
20 consumer debtors and debt settlement companies. In these capacities, Michael
21 Hendrix instigated, participated in, and with knowledge, approved of the wrongful
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1 conduct alleged in this Complaint and otherwise directly or indirectly engaged in
2 conduct violating chapters 19.86 and 18.28 RCW.

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4 20. Robert Merrick, Michael Hendrix, and John Does A-F exercised close
5 control, direction, and management of GCS and Global such that they are charged
6 with knowledge of the wrongdoing of GCS and Global alleged in this Complaint.

7
8 21. In 2004, Robert Merrick on behalf of GCS, negotiated an agreement
9 with RMBT, whereby GCS and RMBT engaged in a joint business enterprise
10 involving a common purpose and a common community of interests.

11
12 22. The central activity of this business enterprise was to aid and assist
13 debt settlement companies with whom GCS partnered in the promotion and
14 carrying out of debt settlement programs directed at indebted consumers.

15
16 23. Pursuant to this business enterprise, GCS, as banking customer of
17 RMBT, opened a custodial deposit bank account at RMBT.

18
19 24. GCS's custodial bank account was established to hold anticipated
20 aggregated funds paid by consumer debtors who participated in debt settlement
21 programs.

22
23 25. RMBT financially benefited from this business enterprise in that
24 RMBT would hold interest-free substantial aggregated funds deposited by GCS.

1 In this regard, by 2009, GCS's single custodial account at RMBT represented more
2 than 50% of all deposits held at RMBT.
3

4 26. Pursuant to their business enterprise, GCS undertook a duty to market
5 and promote to the debt management industry use of what GCS called "virtual
6 stored-value bank accounts" or later denominated "special purpose accounts"
7 (hereinafter collectively "special purpose accounts"). Michael Hendrix served as
8 the chief agent of GCS responsible for marketing and promoting special purpose
9 accounts to the debt management industry.
10

11 27. GCS's special purpose accounts are a device employed by debt
12 settlement companies as a "seamless" component feature of a debt settlement
13 program. Special purpose accounts benefit debt settlement companies in two
14 principal ways. Special purpose accounts secure periodic automatic payments
15 from clients for purposes of paying illegally excessive upfront debt settlement fees.
16 Further, special purpose accounts serve as an artifice for evading state regulations
17 governing debt settlement fees through pretense that the debt settlement company
18 did not receive the client's debt settlement payments. In the unlikely event that
19 heavily indebted consumers financially survive the debt settlement companies'
20 excessive upfront fees, the special purpose accounts accumulate funds from which
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1 debt settlement companies attempt negotiations with consumers' creditors, in
2 exchange for additional fees.

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4 28. Structurally, special purpose accounts are sub-accounts managed by
5 GCS within its custodial account at RMBT, which reflect the beneficial interest of
6 the individual consumer debtors participating in a debt settlement program.

7
8 29. GCS financially benefits from the creation of such sub-accounts in
9 that it charges debt settlement clients additional fees and charges, beyond those
10 already charged by the debt settlement company.

11
12 30. Pursuant to its agreement with RMBT, GCS, through the leadership of
13 Michael Hendrix, promoted and marketed to the debt management industry the use
14 of special purposes accounts as a central feature of debt settlement programs to be
15 offered to indebted consumers.

16
17 31. As a consequence of these efforts, by 2009, GCS was managing
18 600,000 special purpose accounts in service of 500 debt settlement companies that
19 marketed debt settlement programs to indebted consumers.

20
21 32. Pursuant to resulting contracts between GCS and numerous debt
22 settlement companies, debt settlement companies solicited Washington consumers'
23 participation in debt settlement programs featuring GCS's special purpose
24 accounts.
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1 33. Solicitation materials provided to Washington consumers by the
2 subject debt settlement companies universally included a standardized debt
3 settlement contract and standardized “special purpose account application,” as
4 prepared by and supplied by GCS.
5

6 34. Participation in the debt settlement programs universally entailed the
7 following material elements:
8

9 a. The Washington consumer agreed to make monthly debt
10 settlement payments, in amounts specified by the debt settlement company,
11 into a GCS special purpose account. The special purpose account was
12 purportedly to serve the purpose of accumulating funds to ultimately pay
13 specified creditors when the debt settlement company successfully
14 negotiated a settlement with that creditor.
15

16 b. The Washington consumer agreed to pay specified up-front fees
17 and other fees to the debt settlement company, which fees, unknown to the
18 debtor, were illegal owing to their size and accelerated timing of payment.
19

20 c. The Washington consumer executed and returned to the debt
21 settlement company a “special purpose account application” having the false
22 appearance of being an application to open a bank account at RMBT. The
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1 application, further, falsely portrayed GCS as a customer service agent of
2 RMBT.

3
4 d. The “special purpose account application,” in fact, retained
5 GCS, as agent, custodian, and fiduciary of the Washington consumer, to
6 establish, manage, and maintain a sub-account and perform activities with
7 respect to that account.
8

9 e. The Washington consumer agreed to pay “fees and charges”
10 associated with their special purpose account, which fees had the false
11 appearance of being banking fees of RMBT.
12

13 f. The “fees and charges” identified in the special purpose account
14 application, in fact, were fees and charges of GCS, as specified in the
15 contract between GCS and the subject debt settlement company.
16

17 g. The Washington consumer authorized the automatic monthly
18 electronic transfers of debt settlement payments, to be initiated by GCS,
19 from the consumer’s personal bank account and to be credited to a special
20 purpose account managed by GCS. The purpose of such periodic transfers
21 was to secure funds to pay the fees specified in the debt settlement contract,
22 the fees specified in the special purpose account application, and to
23
24 purportedly accumulate funds from which to pay settlements with creditors.
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26

1 h. The Washington consumer authorized the automatic payment of
2 all fees from his special purpose account.

3
4 i. The predatory nature of the fees was such that the Washington
5 consumer's periodic monthly payments were consumed by fees for the first
6 several months of the consumer's participation in the debt settlement
7 program, and substantially consumed by such fees throughout the remainder
8 of their participation in the program.
9

10 35. Faced with glaring and pervasive predatory fee practices in the for-
11 profit debt management industry, many states, including Washington, adopted
12 statutes prohibiting predatory fees and other abusive debt adjuster practices.
13

14 36. The managing, counseling, settling, adjusting, prorating or liquidating
15 of the indebtedness of a debtor, or receiving of funds for the purposes of
16 distributing said funds among creditors in payment of partial payment of the
17 obligations of a debtor, are activities denominated as "debt adjusting" under
18 chapter 18.28 RCW.
19

20 37. At all times material to allegations made in this Complaint, each
21 Defendant was mindful of the debt adjuster industry's history of predatory fee
22 practices and of state laws, including those of Washington, prohibiting abusive
23 debt adjuster practices.
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1 38. Named Plaintiffs are Washington residents who received solicitations
2 from debt settlement companies with whom GCS contracted, involving
3 participation in a debt settlement program having the features detailed above, who
4 participated in such a program, and for whom GCS established, maintained, and
5 managed a special purpose account.
6

7
8 39. RCW 18.28.080(1) provides that a debt adjuster may make an initial
9 charge of up to twenty-five dollars (\$25). The initial charge of debt settlement
10 companies with whom GCS contracted substantially and invariably exceeded \$25.
11

12 40. In the case of the Carlsens, as point of illustration, the initial upfront
13 fee was \$2,053.20.

14 41. In the case of the Pophams, the initial upfront fee was \$6,944.48.

15
16 42. Defendants knew that the initial fees of debt settlement companies
17 with whom GCS contracted substantially exceeded the amount permitted by RCW
18 18.28.080(1).
19

20 43. GCS and RMBT knowingly transferred named Plaintiffs' and Class
21 members' funds out of the state of Washington for purposes of paying the subject
22 illegal fees and subsequently paid the illegal fees, all for the purpose of carrying
23 out the illegal debt adjuster activities described in this Complaint.
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1 44. RCW 18.28.080(1) provides that the fee retained by a debt adjuster
2 from any one payment made by a debtor may not exceed fifteen percent (15%) of
3 the payment. Fees of debt settlement companies with whom GCS contracted
4 substantially and invariably exceeded 15% of any one payment required under the
5 debt settlement program. Program fees, in fact, consumed the entirety of the initial
6 monthly payments made by Class members.
7

8
9 45. Defendants knew that the subject fees violated Washington law by
10 exceeding 15% of the monthly payment made by Class members.
11

12 46. GCS and RMBT knowingly transferred Class members' funds,
13 including those of named Plaintiffs, out of the state of Washington for purposes of
14 paying the subject illegal fees and subsequently paid the fees all for the purpose of
15 carrying out the illegal debt adjuster activities described in this Complaint.
16

17 47. RCW 18.28.110 provides that every debt adjuster shall perform the
18 functions specified under RCW 18.28.110. GCS as a debt adjuster in its own
19 capacity and as agent providing services to debt settlement companies, owed to
20 Class members those duties imposed by RCW 18.28.110.
21

22 48. RCW 18.28.110(1) provides that all payments not distributed to
23 creditors shall be kept and maintained in this state, as shall be all records pertinent
24 to such payments.
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1 49. The subject debt settlement programs involved keeping and
2 maintaining Class members' payments outside of the state of Washington. GCS
3 and RMBT knowingly transferred named Plaintiffs' and Class members' funds out
4 of the state of Washington in violation of Washington law, all for the purpose of
5 carrying out the illegal debt adjuster activities described in this Complaint.
6

7
8 50. RCW 18.28.110(4) provides that the debt adjusters must distribute to
9 creditors at least once each forty days after receipt of payment at least eighty-five
10 percent (85%) of each payment received from the debtor.
11

12 51. The subject debt settlement programs, by their intrinsic nature,
13 required that consumer payments not be distributed in accordance with RCW
14 18.28.110(4).
15

16 52. GCS knowingly maintained and managed named Plaintiffs' and Class
17 members' special purpose accounts in violation of RCW 18.28.110(4), and RMBT
18 held the aggregated proceeds of such accounts, all for the purpose of carrying out
19 the illegal debt adjuster activities detailed in this Complaint.
20

21 53. RCW 18.28.090 provides: "If a debt adjuster contracts for, receives or
22 makes any charge in excess of the maximums permitted by this chapter, except as
23 the result of an accidental and bona fide error, the debt adjuster's contract with the
24 debtor shall be void and the debt adjuster shall return to the debtor the amount of
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1 all payments received from the debtor or on the debtor's behalf and not distributed
2 to creditors."

3
4 54. Defendants knew that named Plaintiffs' and Class members' contracts
5 with debt settlement companies were *void ab initio*.

6
7 55. GCS and RMBT transferred named Plaintiffs' and Class members'
8 funds out of the state of Washington, pursuant to known void contracts, and GCS,
9 thereafter, paid unowed fees using Plaintiffs' and Class members' proceeds, all for
10 the purpose of carrying out the illegal debt adjuster enterprise detailed in this
11 Complaint.
12

13 56. RCW 18.28.190 provides: "Any person who violates any provision of
14 this chapter or aids or abets such violation, or any rule lawfully adopted under this
15 chapter or any order made under this chapter, is guilty of a misdemeanor."
16

17 57. Defendants violated provisions of chapter 18.28 RCW and knowingly
18 aided and abetted one another and debt settlement companies with whom GCS
19 contracted, all for the purpose of carrying out the illegal debt adjuster activities
20 detailed in this Complaint, thereby enriching themselves at the expense of heavily
21 indebted Washington consumers.
22

23
24 58. In April of 2009, as a result of a Federal Deposit Insurance
25 Corporation (FDIC) investigation of RMBT's activities relating to GCS and debt
26

1 settlement companies, the FDIC issued an Order to Cease and Desist as against
2 RMBT.

3
4 59. Each Defendant was aware of the Order to Cease and Desist and its
5 contents.

6 60. The Order to Cease and Desist, among other things, directed that:

7
8 a. RMBT ensure RMBT's compliance with state consumer
9 protection laws and regulations as they relate to debt settlement companies;

10 b. Ensure ongoing review of debt settlement companies and
11 payment processors such as GCS and ACH originators such as GCS;

12
13 c. Ensure that payment processors, such as GCS, and ACH
14 originators, such as GCS, rectify harmful consumer activities, or RMBT
15 shall cease operations with such payment processors, ACH originators, or
16 debt settlement companies, such as those with whom GCS contracted
17 pursuant to RMBT and GCS's joint venture;

18
19 d. Ensure that disclosures provided to consumers accurately
20 reflect the obligations by and among RMBT, payment processors, such as
21 GCS, ACH processors, such as GCS, and consumers;

22
23 e. Ensure that marketing materials of payment processors, such as
24 GCS, ACH originators, such as GCS, and debt settlement companies, such
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1 as those with whom GCS had contracted, comply with consumer protection
2 laws and regulations; and

3 f. Ensure that payment processors, such as GCS, ACH
4 originators, such as GCS, and debt settlement companies, such as those with
5 whom GCS has contracted, take all necessary corrective actions in a timely
6 manner.
7

8
9 61. As a consequence of the FDIC Cease and Desist Order, on or about
10 August 6, 2009, without prior notice to Class members, GCS opened a new
11 custodial account at Bank of Oklahoma and transferred substantially all of its
12 custodial holdings at RMBT to its new custodial account at Bank of Oklahoma.
13

14 62. To conceal the circumstances of its transfer, GCS issued materially
15 false letters to Class members that deceptively represented that "This change is
16 part of Global's ongoing process of expanding our banking partnerships,
17 improving our services and efficiencies, and continuing to protect the interests of
18 our customers."
19

20
21 63. Defendants failed to advise Plaintiffs or Class members of the Order
22 to Cease and Desist, failed to advise Plaintiffs or Class members that its marketing
23 materials did not comply with consumer protection laws and regulations, failed to
24 advise Plaintiffs or Class members that its disclosures did not accurately reflect the
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1 relationships between RMBT, GCS, and debt settlement companies, failed to
2 advise Plaintiffs or Class members that Washington consumers has been subjected
3 to harmful consumer activities by debt settlement companies with whom GCS had
4 contracted, and failed to advise Plaintiffs or Class members that corrective actions
5 had been ordered by the FDIC and that GCS transfers were made as a result of
6 those ordered corrective actions.
7

8
9 64. Beginning on or before August 6, 2009, GCS began making electronic
10 transfers of monthly payments from Class members' Washington bank accounts
11 into a custodial account of GCS held at Bank of Oklahoma.
12

13 65. The subject custodial account of GCS now held at Bank of Oklahoma
14 is being employed by Defendants in the same wrongful manner and for the same
15 wrongful purposes detailed in this Complaint.
16

17 18 V. CLAIMS

19 A. Aiding and Abetting the Commission of Criminal, Unfair, and 20 Deceptive Business Conduct. 21

22 66. Any violation of chapter 18.28 RCW constitutes an unfair or
23 deceptive business practice under chapter 19.86 RCW.
24

25 67. The business practices of debt settlement companies with whom GCS
26 contracted, as detailed above, violated chapter 18.28 RCW and otherwise

1 constitute unfair and deceptive business practices, which practices impacted the
2 public interest and caused injury to named Plaintiffs and Class members in their
3 business and property.
4

5 68. Defendants knowingly aided and abetted debt settlement companies
6 with whom GCS contracted in the commission of criminal, unfair, and deceptive
7 practices, including practices violating chapters 18.28 and 19.86 RCW, by giving
8 substantial assistance that proximately caused harm to named Plaintiffs and to
9 Class members in their business and property.
10

11 69. Defendants knowingly and substantially assisted debt settlement
12 companies by, among other things:
13

14 a. Offering to serve and serving as a custodian of Plaintiffs' and
15 Class members' debt settlement payments secured through illegal contracts;
16

17 b. Offering to serve and serving as custodian of Plaintiffs' and
18 Class members' payments for purposes of paying illegal fees;
19

20 c. Establishing, maintaining, and managing special purpose
21 accounts as a artifice to evade state regulations governing the debt
22 management industry, including chapter 18.28 RCW;
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1 d. Acting as agents of debt settlement companies, assuming debt
2 settlement companies' duties under RCW 18.28.110, and performing those
3 functions not in accordance with RCW 18.28.110;
4

5 e. Keeping and maintaining Plaintiffs' and Class members'
6 special purpose accounts in a fashion other than as required under RCW
7 18.28.110(4);
8

9 f. Offering to assume authority, assuming authority, and
10 exercising authority to transfer Plaintiffs' and Class members' funds for
11 purposes of paying illegal, unfair, and unowed fees;
12

13 g. Paying illegal, unfair, and unowed fees from Plaintiffs' special
14 purpose accounts;
15

16 h. Offering to assume authority, assuming authority, and
17 exercising authority to transfer named Plaintiffs' and Class members' debt
18 settlement funds out of the state of Washington;
19

20 i. Misrepresenting and concealing the actual relationship between
21 RMBT, GCS, and Class members;
22

23 j. Concealing from named Plaintiffs and Class members the
24 actual relationship between GCS and the debt settlement companies with
25 whom Plaintiffs and Class members had contracted; and
26

1 k. Withholding from Plaintiffs and Class members information
2 material to their special purpose accounts and their participation in debt
3 settlement programs.
4

5 70. Defendants and the debt settlement companies with whom GCS
6 contracted were each generally aware of their roles in the overall wrongful
7 activities of one another at the time that assistance was rendered.
8

9 71. Defendants are each liable for the entire loss suffered by named
10 Plaintiffs and Class members, including those caused by debt settlement companies
11 with whom GCS contracted.
12

13
14 **B. Commission of Unfair and Deceptive Business Acts.**

15 72. Violations of chapter 18.28 RCW constitute unfair or deceptive
16 business practices under chapter 19.86 RCW.
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18 73. GCS and RMBT received funds of named Plaintiffs and Class
19 members for purposes of distributing said funds among creditors in partial payment
20 of obligations.
21

22 74. GCS, in its own capacity, holds itself out as engaged in the business
23 of managing, counseling, settling, adjusting, and/or liquidating the indebtedness of
24 debtors.
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1 75. As to conduct alleged in this Complaint, GCS is a third-party for-
2 profit company not doing business under or as permitted by laws of this state or of
3 the United States, relating to banks.
4

5 76. With respect to conduct alleged in this Complaint, RMBT was not
6 doing business as permitted by the laws of this state or of the United States relating
7 to banks.
8

9 77. GCS and RMBT are debt adjusters and otherwise engaged in debt
10 adjusting within the meaning of chapter 18.28 RCW and with respect to conduct
11 alleged in this Complaint.
12

13 78. GCS's and RMBT's conduct, as alleged in this Complaint, constitutes
14 unfair and deceptive acts or practices committed in trade or commerce impacting
15 the public interest, which conduct proximately caused injury or harm to named
16 Plaintiffs and Class members in their business or property.
17

18 79. Defendants Robert Merrick and Michael Hendrix, as officers and
19 directors of GCS and Global, directly participated in and directed the wrongful
20 business conduct of GCS alleged in this Complaint and with knowledge approved
21 of GCS's wrongful business conduct.
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1 80. Defendant Global managed the actual business affairs of its subsidiary
2 GCS and directed the wrongful conduct of GCS alleged in this Complaint such that
3 Global is culpable for GCS's misconduct.
4

5
6 **C. Tortious Conduct.**

7 81. GCS was and is a custodial agent of Plaintiffs and Class members.
8 Defendants Merrick and Hendrix were and are subagents of GCS with respect to
9 GCS's custodial duties owed to Plaintiffs and Class members.
10

11 82. GCS owed fiduciary duties to Plaintiffs and Class members to act
12 loyally for the benefit of Plaintiffs and Class members in all matters respecting its
13 custodial role, including the establishment, maintenance, and management of
14 Plaintiffs' and Class members' special purpose accounts and duty to safeguard
15 Plaintiffs' and Class members' interests.
16

17 83. GCS had a duty to use reasonable efforts to provide Plaintiffs and
18 Class members with facts that GCS knew, had reason to know, or should have
19 known were material to Plaintiffs' and Class members' legal interests.
20

21 84. GCS's and its subagents' fiduciary relationship to Plaintiff and Class
22 members did not privilege conduct that was tortuous or criminal.
23
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1 85. GCS and its subagents Robert Merrick and Michael Hendrix,
2 negligently and intentionally breached duties owed to Plaintiffs and Class members
3 by, among other things:
4

5 a. Failing to disclose to Plaintiffs and Class members that their
6 debt settlement contracts were void;
7

8 b. Failing to disclose to Plaintiffs and Class members that fees
9 being paid were illegal and unowed;
10

11 c. Initiating transfers of Plaintiffs' and Class members' money out
12 of the state of Washington for purposes of paying unowed, unfair, and illegal
13 fees;
14

15 d. Establishing, maintaining, and managing special purpose
16 accounts as an artifice for evading consumer protections, including
17 limitations on debt settlement fees;
18

19 e. Paying unowed, unfair, and illegal fees using Plaintiffs and
20 Class members' funds; and
21

22 f. Elevating their own pecuniary interests above those of Plaintiffs
23 and Class members.
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1 86. GCS and its subagents Robert Merrick and Michael Hendrix
2 materially benefitted from their breach of fiduciary duties to Plaintiffs and Class
3 members.
4

5 87. As a proximate result of breach of duties by GCS and its subagents
6 Robert Merrick and Michael Hendrix, Plaintiffs and Class members suffered loss,
7 damages, and/or injury.
8

9
10 **D. Injunctive Relief.**

11 88. Class members and Washington consumers generally remain unaware
12 of Defendants' wrongful conduct or that the debt settlement programs in which
13 they are engaged are illegal.
14

15 89. GCS and RMBT are engaged in business activities, continuing in
16 nature, instrumental to the carrying out of the ongoing criminal enterprises directed
17 at Class members and Washington consumers generally.
18

19 90. GCS, as custodian of Plaintiffs' and Class members' funds, owes
20 continuing duties, including fiduciary duties to act loyally for the benefit of
21 Plaintiffs and Class members and to provide Plaintiffs with facts material to
22 Plaintiffs' and Class members' special purpose accounts.
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1 91. GCS and RMBT are in possession of and hold in constructive trust,
2 funds belonging to Plaintiffs and Class members obtained pursuant to void and
3 criminally illegal debt settlement contracts.
4

5 92. GCS and RMBT are engaged in transferring Class members' funds
6 outside the state of Washington and into custodial accounts held outside of
7 Washington, for purposes of securing payment of criminally illegal and unowed
8 fees. Class members are unaware that such transfers are illegal, that the subject
9 fees are illegal, and that the fees are unowed.
10

11 93. GCS and RMBT, on a continuing basis, are engaged in paying illegal
12 and unowed fees from Class members' special purpose accounts. Class members
13 remain unaware that the fees being paid are illegal and unowed.
14

15 94. Class members and the general public will suffer continuing,
16 immediate, and irreparable injury, absent the issuance of appropriate injunctive and
17 equitable relief by this Court.
18

19 95. Class members have no complete, speedy, and adequate remedy at
20 law with respect to Defendants' continuing conduct.
21

22 96. Preliminary and final injunctive relief is necessary to prevent further
23 injury to Class members and to the general Washington public, including:
24
25
26

1 a. An order enjoining Defendants from paying debt adjuster fees
2 using Class members' funds in Defendants' custody;
3

4 b. An order enjoining GCS and RMBT from transferring funds
5 from Class members' Washington bank accounts;
6

7 c. An order directing Defendants to hold in trust until further
8 direction of this Court all proceeds directly or indirectly obtained from
9 Plaintiffs or Class members;
10

11 d. An order directing that Defendants provide a complete
12 accounting of: i) the identities of each Class member; ii) the amount of
13 remaining funds associated with each Class member's special purpose
14 account; and iii) the identities of each debt settlement company or other
15 entity to whom distributions have been made from the special purpose
16 account and the amounts of such distributions;
17

18 e. A final order directing the disbursal of funds held in trust
19 pursuant to order of this Court; and
20

21 f. An order enjoining each Defendant from engaging in further
22 business activities violating chapter 18.28 RCW or chapter 19.86 RCW.
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VI. CLASS CERTIFICATION

97. Named Plaintiffs bring this action on behalf of themselves and a Washington Class composed of the following individuals: All Washington residents for whom GCS has established, maintained, or managed a special purpose account.

98. Members of the Class are so numerous that their joinder is impracticable. GCS boasts of serving over 500 debt settlement companies nationally and of managing over 600,000 special purpose accounts.

99. There are questions of law and fact common to the Class, including those identified in paragraph 103 below.

100. The claims and defenses of the named Plaintiffs are typical of the claims and defenses of the Class.

101. Named Plaintiffs are members of the proposed Class and will fairly and adequately protect the interests of the Class.

102. Defendants have acted or refused to act on grounds generally applicable to the Class as a whole rendering certification appropriate under Fed. R. Civ. P. 23(b)(2).

103. Further, core common questions of law and fact central to claims of the Class predominate over individual questions, rendering certification

1 appropriate under Fed. R. Civ P. 23(b)(3). Core common questions of law and fact
2 include:

3
4 a. Whether Defendants are debt adjusters or engaged in debt
5 adjusting within the meaning of chapter 18.28 RCW, or are otherwise
6 subject to that statute;

7
8 b. Whether debt settlement companies with whom GCS and Class
9 members have contracted are engaged in debt adjusting within the meaning
10 of chapter 18.28 RCW, or are otherwise subject to that statute;

11
12 c. Whether Defendants knowingly and substantially assisted debt
13 settlement companies with whom GCS and Class members have contracted
14 in violating chapter 18.28 RCW and/or chapter 19.86 RCW;

15
16 d. Whether, at the time of assistance, Defendants were generally
17 aware of their role in the overall wrongful activities;

18
19 e. Whether Class members' contracts with debt settlement
20 companies are *void ab initio* and whether GCS and RMBT should thus be
21 enjoined from making payments pursuant to those void contracts;

22
23 f. Whether standardized fees charged to Class members are
24 criminally illegal or otherwise constitute an unfair or deceptive business
25
26

1 practice and, further, whether GCS and RMBT should be enjoined from
2 paying such fees using Class members' funds;

3
4 g. Whether GCS's standardized practices with respect to the
5 maintenance and management of Class members' special purpose accounts
6 violate chapter 18.26 RCW, or otherwise constitute unfair or deceptive
7 business practices;

8
9 h. Whether GCS's special purpose account fees constitute fees for
10 debt adjusting services within the meaning of RCW 18.28.080(1);

11
12 i. Whether GCS and RMBT have acted in concert pursuant to a
13 common design; and

14
15 j. Whether Class members are uniformly entitled to
16 reimbursement of the amount of all payments made not distributed to
17 creditors.

18
19 104. The class device is a superior method of adjudicating Class members'
20 claims as compared to other available methods for fairly and efficiently
21 adjudicating this controversy.

22
23 105. Class members are financially distressed individuals who are unlikely
24 to have any meaningful recourse against Defendants absent collective pursuit of
25 their claims under Fed. R. Civ. P. 23.
26

1 106. Class members remain unaware that the conduct of GCS, RMBT, and
2 debt settlement companies with whom GCS has contracted are illegal. Class
3 members are thus incapable of pursuing their claims or protecting their interests on
4 an individual basis.
5

6 107. The value of Class members' claims, taken individually, is such that
7 their claims have negative value and cannot, as a practical matter, be litigated on
8 an individual basis.
9

10 11 **VII. DEMAND FOR RELIEF**

12 Plaintiffs therefore request, on behalf of themselves and the proposed Class,
13 the following relief:
14

15 1. An order certifying Class members' claims pursuant to Fed. R. Civ. P.
16 23(b)(3) and/or 23(b)(2), or certifying such issues as may be deemed appropriately
17 treated on a class basis;
18

19 2. An order appointing named Plaintiffs as representatives of the Class
20 and appointing undersigned counsel as Class counsel;
21

22 3. An order and decree issuing the preliminary and final injunctive relief
23 identified in paragraph 96 of this Complaint;
24

25 4. An award of damages, jointly and severally, as against each
26 Defendant, in an amount to be proven at the time of trial;

- 1 5. An award of exemplary damages against each Defendant in the
- 2 amount of three times the damages or loss suffered by each Class member;
- 3
- 4 6. An award of prejudgment interest on liquidated damages;
- 5
- 6 7. An award of attorney fees, including those provided for in chapter
- 7 19.86 RCW;
- 8
- 9 8. An award of litigation costs; and
- 10 9. Such other declaratory or injunctive relief as the Court may deem fair
- 11 and equitable.

12 **VIII. JURY DEMAND**

13 Plaintiffs demand a trial by jury in this matter.

14 DATED this 14th day of July, 2010.

15 THE SCOTT LAW GROUP, P.S.

16 By: 

17 Darrell W. Scott, WSBA #20241
18 darrellscott@mac.com

19 Matthew J. Zuchetto, WSBA #33404
20 matthewzuchetto@mac.com

21 -and-

22 DURKOP LAW OFFICE

23 Timothy W. Durkop, WSBA #22985
24 tim@durkoplaw.com

25 *Attorneys for Plaintiffs*

26 AMENDED CLASS ACTION COMPLAINT
AND JURY DEMAND: 33

LAW OFFICES
THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Sally Gustafson Garratt

garratt@benedictlaw.com
janicef@fjtlaw.com

Gregory E. Jackson

gregj@fjtlaw.com
janicef@fjtlaw.com

Haas A. Hatic

haas.hatic@gmlaw.com
melody.ratty@gmlaw.com


Rebecca F. Bratter

rebecca.bratter@gmlaw.com
samantha.grant@gmlaw.com

Richard W. Epstein

richard.epstein@gmlaw.com
maria.salgado@gmlaw.com

EXECUTED this 14th day of July, 2010, at Spokane, Washington.


SAMANTHA SIMATOS
of The Scott Law Group, P.S.